

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-2437
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

APPELLEE

vs.

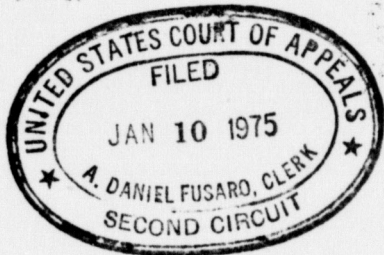
RAYMOND JOHNSON,

APPELLANT

On Appeal from United States District Court
for the District of Vermont

APPENDIX FOR THE APPELLANT

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PAGINATION AS IN ORIGINAL COPY

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UNITEL STATES DISTRICT COURT

DISTRICT OF VERMONT

C. 74-36

UNITED STATES OF AMERICA	}	Sections 812, 841, 952, 960,
v.		and 963
		Title 21, and Section 2, 545
RAYMOND JOHNSON		Title 18
		United States Code

COUNT I

The Grand Jury charges:

From on or about November 1, 1973 up to and including January 10, 1974 in the District of Vermont and elsewhere, RAYMOND JOHNSON, the defendant, unlawfully, willfully and knowingly did combine, confederate and agree together, with Stephen Loewe, named herein as a co-conspirator and with other persons to the Grand Jury unknown, to commit offenses against the United States, to wit, to violate Sections 812 and 952(a), Title 21, United States Code.

It was part of the conspiracy that conspirators RAYMOND JOHNSON and Stephen Loewe would knowingly and intentionally import into the United States from a place outside thereof quantities of methamphetamine, a schedule II, controlled substance, in violation of Sections 812 and 952(a), Title 21, United States Code.

As part of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed within the District of Vermont:

Endorsed: Filed April 4, 1974
Christine M. Weber
Deputy Clerk

1. On or about December 28, 1973 Stephen Loewe
drove an automobile into the United States from Canada.

2. On or about December 28, 1973 RAYMOND JOHNSON
made a statement to Gary Gardner.

COUNT II

The Grand Jury further charges:

On or about the 28th day of December, 1973, in the Judicial District of Vermont, RAYMOND JOHNSON, the defendant, unlawfully, knowingly and willfully did import into the United States from a place outside thereof approximately one and one-half pounds of methamphetamine, a Schedule II controlled substance; in violation of Sections 812, 952, and 960, Title 21, United States Code, and Section 2, Title 18, United States Code.

COUNT III

The Grand Jury further charges:

On or about the 28th day of December, 1973, in the Judicial District of Vermont, RAYMOND JOHNSON, the defendant, unlawfully, knowingly and willfully did possess with intent to distribute approximately one and one-half pounds of methamphetamine, a Schedule II controlled substance; in violation of Section 841, Title 21, United States Code, and Section 2, Title 18, United States Code.

COUNT IV

The Grand Jury further charges:

On or about the 28th day of December, 1973, in the Judicial District of Vermont, RAYMOND JOHNSON, the defendant, unlawfully, willfully, knowingly and fraudulently did import into the United States merchandise contrary to law, to wit, two plastic bags containing one and one-half pounds of a white substance; in violation of Section 545, Title 18, United States Code, and Section 2, Title 18, United States Code.

A TRUE BILL

/s/ CHARLES L. BAKER, JR.
Foreman

GEORGE W. F. COOK
UNITED STATES ATTORNEY

By: /s/ JEROME F. O'NEILL
JEROME F. O'NEILL
ASSISTANT U.S. ATTORNEY

DATE: April 4, 1974

Cr. 74-36

HOLDEN

Sec Cr 74-7

[illegible][illegible]

DATE		PROCEEDINGS
April	4	Filed Indictment for violation of Section 812, 841, 952, 960 and 963, Title 21; and Section 2 and 545, Title 18, U.S.C. 1.
"	"	Record of Grand Jury concurring. 1.
"	8	Filed Appointment of David Gibson, Esq. as counsel for defendant. 2.
"	26	In Court before Judge Holden. William Gray, Esq. for Govt.; David Gibson, Esq. and Bruce Weber, Esq. for Deft. Deft. present in Court with his attys for Arraignment.
"	"	Court makes inquiries of Deft. before plea.
"	"	Deft. waives reading of Indictment and enters a plea of not guilty as to all four counts of Indictment.
"	"	Mr. Gray moves that bail posted in Cr. 74-7 be exonerated and bail in this case be fixed in Cr. 74-36 in the sum of \$500 with 10% deposit. Deft. to be limited to States of Connecticut, Massachusetts and Vermont.
"	"	ORDERED: Motion granted as to bail.
"	"	Mr. Gibson states Motion for Bill of Particulars will be filed and moves for early trial, and states analysis of drug substance has not been made.
"	"	Court informs counsel to prepare a proposed order re analysis. Case continued for one week.

DATE 1974	PROCEEDINGS	
Apr. 26	Filed Appearance Bond in the amount of \$5,000, transferred from Cr. 74-7.	3.
" "	Deft.'s Motion for Bill of Particulars.	4.
" "	Deft.'s Memorandum in support of Motion for Bill of Particulars.	5.
May 13	Filed Order for Independent Chemical Analysis for Evidence Substance. Mailed copy to Attorneys.	6. ✓
June 7	Filed Government's Bill of Particulars for Count I.	7. ✓
" 10	Trial by Jury begun before Judge Holden. Jerome F. O'Neill, Ass't. U. S. Attorney for Government. David A. Gibson, Esq., for Defendant.	
" "	A Jury was impaneled by the Clerk.	
" "	ORDERED; that two alternates be drawn and two alternate Jurors were drawn by the Clerk.	
" "	The Oath to Petit Jurors in a criminal case was administered by the Clerk to the Jurors.	
" "	Opening statements were made to the Jury by Mr. O'Neill.	
" "	Mr. Gibson reserves the right to make an opening statement at this time.	
" "	The following witnesses, sworn by Clerk, were examined for Government: John R. Hurley, Richard E. Hamilton, John Clark, and Gary Gardner.	
" "	Jury excused.	
" "	Mr. O'Neill continues his examination of Mr. Gardner as to methods he used in affording defendant his rights before his signing of waiver.	
" "	Mr. Gibson objects to method used stating his client was not appraised of his connection in the case of smuggling at the time he signed waiver, that he has the right to know what charges he is being charged with, under the Miranda warnings.	
" "	Walter Raymond Kiniry, Jr., sworn by Clerk, was examined for Government.	
" "	Court makes inquiry of witness.	
" "	Gary Gardner was recalled and re-examined for Government.	
" "	Court makes inquiry of witness.	
" "	At the Bench, attorneys and defendant present, record may show Court called attention to counsel that the proceedings that have been held outside the hearing of the Jury have been done in the presence of a member of the Press. Counsel have indicated they do not wish to have the Jury sequestered and Court will take a recess and instruct the Jury not to read anything about it in the paper.	
" "	In open Court, Jury present, Court informs Jury they are excused until 9:30 A.M. tomorrow morning and instructs them not to read or listen to anything on TV or radio about this case.	
" 11	Filed Government's Memorandum in Support of Admission of Johnson's Statements.	8.
" "	Filed Defendant's Memorandum re Miranda Warning.	9.
" "	Trial resumed.	
" "	In open Court, Jury not present, Mr. O'Neill, with leave of Court, requests to put both Mr. Gardner and Mr. Kiniry back on the stand.	
" "	Walter Raymond Kiniry, Jr. was recalled and further examined for Government.	

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U.S.A. vs. Raymond Johnson

DATE 1974	PROCEEDINGS
June 11	Gary Gardner was recalled and further examined for Government.
" "	Court makes inquiry of witness.
" "	Court states to counsel that Court finds that information given to Court at the time of arraignment shows that the defendant is 23 years of age and had completed two years of college and at the time of arraignment was enrolled in Housatonic Community College; that Defendant Johnson was warned of his right to remain silent, that anything he said could be used against him in a Court and that he had the right to the presence of an attorney and that if he couldn't afford an attorney one would be appointed for him if he so desired and that if he could not afford an attorney the Court or a U. S. Magistrate would appoint one for him. He was further advised if he declined to answer questions now, with or without a lawyer, he would have the right to stop the questioning at any time or at any time with consultation with the lawyer and that he was further advised that he could waive his right to counsel and his right to remain silent and to remain silent without consulting a lawyer; that after these warnings were given, the defendant Raymond Johnson signed in the presence of Special Agent Gardner a signed waiver that left blank the time and date of signing and the time and date he was taken into custody. In view of all the facts presented, the full Miranda warnings were given and the defendant knowingly and intelligently waived his right and agreed to answer the questions propounded by Special Agent Gardner.
" "	In open Court, Jury present, Gary Gardner and Raymond Kiniry, Jr. were recalled and further examined for Government.
" "	Thomas Baldwin, sworn by Clerk, was examined for Government.
" "	Jury excused. Mr. O'Neill states to Court what he intends to present to the Jury in calling his next witnesses and the testimony to be asked of these witnesses; that he seeks to introduce that Defendant Johnson lied of having drugs in his possession and to seek knowledge and intent of Defendant Johnson, objected to by Mr. Gibson.
" "	ORDERED: that the Court has considered the matter on the strength of the present record and the Court rules that the prohibitive value of the Government's offer is not of sufficient importance to overcome the possible prejudicial effect of the possible arrest and information developed by the Government on January 8, 1974, concerning the possession of other drugs. The offer of the Government is excluded.
" "	In open Court, Jury present, the following witnesses, sworn by Clerk, were examined for Government: Haig Soghigian, Robert J. Grant and Miss Anna E. Finnerty.
" "	Filed Defendant's Request to Charge. 10.
" "	In open Court, Jury not present. At 1:38 P.M. Government rests.
" "	Mr. Gibson moves the Court to enter a Judgment of Acquittal for Defendant Johnson on all four counts, objected to

DATE	PROCEEDINGS
June 11	by Mr. O'Neill.
" "	ORDERED: that defendant's motion for Judgment of Acquittal is denied.
" "	In open Court, Jury present, opening statements were made to the Jury by Mr. Gibson.
" "	Jury excused.
" "	Stephen Lester Loewe, sworn by Clerk, was informed by Court he was brought here to testify in this case and that he has the right to remain silent as to any questions and has the right to call his counsel or some other counsel if he preferred, before making any statements but Mr. Loewe informed Court he didn't care to contact his attorney and would be willing to testify in this case.
" "	In open Court, Jury present, Stephen Lester Loewe was examined for Defendant Johnson.
" 12	Filed Government's Requests to Charge. 11.
" "	Filed Defendant's Supplemental Request to Charge. 12.
" "	Trial resumed.
" "	Stephen Lester Loewe was recalled and cross-examined by Mr. O'Neill.
" "	Raymond C. Johnson, Jr., sworn by Clerk, was examined for Defendant.
" "	At 3:06 P.M. Defendant rests. Government Rests. Evidence closed.
" "	Harold K. Mercier, sworn by Clerk, was examined for Government in rebuttal.
" "	Court makes inquiry of witness.
" "	At 3:15 P.M. Government rests in rebuttal, Defendant rests. Evidence closed.
" "	Jury excused.
" "	Mr. Gibson again moves at the close of all the evidence for a Judgment of Acquittal of Mr. Johnson, objected to by Mr. O'Neill.
" "	ORDERED: that defendant's motion for a directed verdict of acquittal is denied as to each and every count of the Indictment.
" "	In open Court, Jury present, Jury excused until 9:30 A.M. tomorrow morning.
" "	In Chambers, attorneys present, Court and counsel discuss various issues of Government and Defendant's requests to Charge and what the Court intends to accept from these requests in presenting its Charge to the Jury.
" 13	Trial resumed.
" "	In open Court, Jury not present, Court announced to counsel and defendant that as a result of our Charge Conference that the Government has some statement to make for the record regarding Count IV.
" "	Mr. O'Neill states to Court that Government withdraws Count IV of the Indictment.
" "	In open Court, Jury present, opening arguments were made to the Jury by Mr. O'Neill, followed by Mr. Gibson.
" "	Rebuttal arguments were made to the Jury by Mr. O'Neill.
" "	ORDERED: that John J. Gecha be appointed Foreman of the Jury.
" "	At 10:50 A.M. Court commences Charge to the Jury, concluding at 11:35 A.M.

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DATE 1974	PROCEEDINGS
June 13	After Charge, Court further instructs Jury.
" "	At 11:50 A.M. the Jury retire to deliberate the case.
" "	At 2:40 P.M. the Jury come into Court and report a verdict of guilty as to Counts I and II of the Indictment and report a verdict of not guilty as to Count III of the Indictment.
" "	Mr. Gibson moves that Jury be polled.
" "	ORDERED: Motion granted.
" "	The Jury was polled by the Clerk.
" "	Jury excused.
" "	ORDERED: that Court will accept the Jury's verdict of guilty as to Counts I and II and will accept the Jury's verdict of not guilty as to Count III.
" "	ORDERED: that Court will grant Defendant fourteen days from this date to file any motions he may care to.
" "	ORDERED: that bail will be continued as previously set and Court will restrict travel to the State of Connecticut and the State of Vermont and the Defendant may travel in the State of Massachusetts for the purpose of consulting with his attorney or for attendance at Court. The travel in New Hampshire is restricted to Alstead, New Hampshire.
" "	ORDERED: that defendant is to be in contact with his attorney each week or by phone.
" "	Filed Judgment Order -- Judgment is hereby entered on the verdict of the Jury that the Defendant is guilty as to Counts I and II of the Indictment and not guilty as to Count III of the Indictment. Mailed copy to attorneys. 13. ✓
" 27	Deft's Motion for Judgment of Acquittal. 14. ✓
" "	" in Arrest of Judgment. 15. ✓
" "	" for New Trial. 16. ✓
July 22	Filed Deft.'s Memorandum in support of Motion in Arrest of Judgment. 17.
" "	Filed Deft.'s Memorandum in support of Motion for Judgment of Acquittal. 18.
" "	Filed Deft.'s Memorandum in support of Motion for New Trial. 19.
" 30	Filed Govt.'s Opposition to Motion for Judgment of Acquittal and Memorandum in support thereof. 20. ✓
" "	" Govt.'s Opposition to Motion for New Trial and Memorandum of Points & Authorities in support thereof. 21. ✓
" "	" Govt.'s Opposition to Motion in Arrest of Judgment and Memorandum of Points and Authorities in opposition thereto. 22. ✓
" "	" Govt.'s Certificate of Service of paper Nos. 20, 21 and 22. 23. ✓
Sept. 18	" Supplemental Memorandum of Deft. in support of Motions for Judgment of Acquittal and for New Trial. 24. ✓
Sept. 20	In open Court before Judge Holden, defendant not present with his attorney, David Gibson, Esq.; Jerome O'Neill, Esq. for Government.
" "	Hearing on defendant's motion for judgment of acquittal; and on defendant's motion in arrest of judgment; and on defendant's motion for new trial.
" "	Taken under consideration.
" "	Filed Response to Supplemental Memorandum of Deft. Johnson in support of Motion for Judgment of Acquittal and for New Trial. 25

Cr. 74-36 US vs. Johnson

DATE	PROCEEDINGS	
974		
Oct. 11	Filed Memorandum and Order -- Deft's Motions in arrest of judgment, for judgment of acquittal and for a new trial are denied. Mailed copy to attys.	26.✓
" 15	In open Court before Judge Holden. Jerome F. O'Neill, Ass't U. S. Attorney for Government. David A. Gibson, Esq., for Defendant.	
" "	Defendant Johnson in Court with his attorney, David Gibson, Esq., for sentence on Counts I and II.	
" "	Court makes inquiry of Mr. Gibson as to his comments of the Probation Report of which Mr. Gibson presented to the Court of a few corrections in the report.	
" "	Court makes inquiry of Defendant and Mr. Gibson before sentence.	
" "	Sentence -- that Defendant will benefit under the Federal Youth Corrections Act. Defendant is to be committed to the custody of the Attorney General for treatment and supervision under the provisions of 18 U.S.C., Section 5010(b) until discharged by the Division under Section 517(c). Sentence on Counts I and II to run concurrently. Execution of sentence is stayed pending appeal.	
" "	ORDERED: that bail be continued pending appeal.	
" "	Filed Judgment and Probation/Commitment Order -- that Defendant will benefit under the Federal Youth Corrections Act. Defendant is to be committed to the custody of the Attorney General for treatment and supervision under the provisions of 18 U.S.C., Section 5010(b) until discharged by the Division under Section 517(c). Sentence on Cts I and II to run concurrently. Execution of sentence is stayed pending appeal. Bail and condition of release continued pending disposition of the Defendant's appeal from judgment of conviction. Mailed copy to attorneys.	27.
" 17	Deft's Notice of Appeal. Mailed copy to U. S. Attorney, David Gibson, Esq., Judge Holden, Court Reporter and Clerk, U. S. Court of Appeals for the Second Circuit.	28.
" 30	Financial Affidavit of Deft. in re appeal.	29.
Nov. 4	Mailed Record on Appeal to Clerk, U. S. Court of Appeals for the Second Circuit, New York, N. Y. Attys. notified.	
Dec. 11	Filed transcript of Arraignment 4-26-74 and trial of June 10,11,12 & 13, 1974. (two volumes)-	30.

1 of you were asked by virtue of the fact that you indicated
2 that you wouldn't have had answered any differently to some
3 of the questions, that if the Government prove its case beyond
4 a reasonable doubt, that you would return a verdict of guilty.
5 The Government suggests to you here that on each of these 3
6 counts, it has proved its case against RAYMOND JOHNSON, beyond
7 a reasonable doubt and on that basis, would ask you to return
8 a verdict of "guilty" on each of those three counts.

9 THE COURT: We'll take a short recess.

10 (RECESSED FROM 10:30 A.M. UNTIL 10:47 A.M.)

11 DEPUTY CLERK KEITH SYLVESTER: The
12 Crier will make proclamation for strict silence while the
13 Court delivers the Charge to the Jury.

14 CRIER MILLER: Hear ye, hear ye, hear
15 ye. All persons are enjoined to preserve strict silence in
16 the court room while the Court delivers the Charge to the
17 Jury. The marshals will guard the doors.

18 THE COURT: Ladies and Gentlemen, the
19 Court appoints Mr. GECHA to serve as your Foreman, in this
20 case.

21 This is a criminal prosecution by the
22 United States against RAYMOND JOHNSON. It comes to the Court
23 by way of a presentment of the Grand Jury in an indictment
24 which originally charged in four counts, violation of the laws

1 of The UNITED STATES. The fourth count of the indictment has
2 been withdrawn because of - by the Government, so that there
3 are present for you to consider, three counts.

4 Later in the course of these instructions
5 I will refer to the specific offenses alleged in each count.
6 Before considering the specific a charges asserted in the
7 indictment, I will instruct you concerning certain general
8 rules that are to govern your deliberations in this case and
9 it is your duty as jurors, to follow the law as stated in the
10 instructions by the Court and to apply therules of law so
11 given to the facts as you find them to be from the evidence
12 in the case.

13 Now, you are the sole judges of the
14 facts and you are not to single out any one instruction alone
15 as stating the law but must consider the instructions in
16 their entirety.

17 As I indicated earlier, in the trial,
18 the fact that the Defendant has been indicted by the Grand
19 Jury must in no way influence your verdict. The indictment
20 is nothing more than a formal method of accusing the defendant
21 of a crime prior to trial.

22 The GRand Jury investigation is neces-
23 sarily one-sided. The Government presents to the Grand Jury
24 all the evidence favorable to the return of an indictment.

1 Whereas, the Defendant has no opportunity on this occasion to
2 present evidence in his own behalf. Thus, the indictment is
3 not evidence of any kind against the accused and must not
4 create any, or permit any presumption of inference of guilt.

5 Now, how do you determine the truth and
6 how do you determine and appraise the credibility of the wit-
7 nesses who have appeared before you? Well, you must use your
8 plain common, every day, sense. You have seen the witnesses
9 and you have been observing the manner of their testimony and
10 whatever credit you may give them must be determined by their
11 conduct, their manner of testifying, their relationship and
12 the interest that the witness may have in the outcome.
13 In other words, you again apply your common sense and your
14 every day experience. You may, of course, take into consider-
15 ation the interest of a witness and an interested witness, of
16 course, is not necessarily unworthy of belief, but it is a
17 factor which you may consider in determining the weight and
18 credibility to be given to his testimony.

19 If any witness has wilfully testified
20 falsely to any material fact, you may disregard all of this
21 testimony. Or, you may accept only such part of his testimony
22 as you believe worthy of belief and as it appeals to your
23 reason or judgment.

24 Now, a witness may be discredited, or

1 impeached by contradictory evidence, or by evidence that at
2 other times the witness may have made statements inconsistent
3 with his present testimony.

4 If you believe that any witness has been
5 impeached and thus discredited, it is your exclusive province
6 to give the testimony of that witness such credibility as you
7 think it deserves.

8 Now, evidence at some other time a
9 witness, other than the accused, has said or done something,
10 or has failed to say or do something which is inconsistent
11 with his testimony at the trial, may be considered by you for
12 the sole purpose of judging the credibility of the witness but
13 it is not to be considered as evidence or proof of the truth
14 of what he, that ordinary witness said outside of Court.

15 Where, however, the witness is a defend-
16 ant on trial in the case, and by such statement or other con-
17 duct the defendant admits some facts against his interests,
18 then such statement or other conduct, if knowingly made or
19 done, may be considered as evidence of the truth of the fact
20 as it was then stated to be as well as for the purpose of
21 judging his credibility.

22 Now, in this case the Defendant has
23 elected to testify in his own defense. The law permits one
24 accused of a crime to testify in his own behalf if he so

1 desires and he is a competent witness. The defendant's testi-
2 mony is to be judged in the same way as that of any other
3 witness, bearing in mind the genuine interest that he has in
4 the final outcome.

5 Now the testimony of a witness may also
6 be discredited or impeached by showing that the witness has
7 been convicted of a felony. That is a crime punishable by
8 imprisonment for a term of years. Prior conviction does not
9 render the witness incompetent to testify, but is, it was a
10 circumstance which you may consider in determining the credi-
11 bility of the witness and it is the province of you, the Jury,
12 to determine the weight to be given to the testimony of the
13 witness and as to any prior conviction by way of impeachment.

14 There has been evidence that the defend-
15 ant has been convicted of prior criminal conduct. Again,
16 such evidence bears on the matter of the credibility of the
17 defendant as a witness and it is a matter which you may con-
18 sider. But the fact of such conviction at some other time,
19 does not necessarily bear on the facts as appear in this case,
20 except as they may bear on his acquaintanceship with STEPHEN
21 LOEWE.

22 Now, you are to consider only the evi-
23 dence in this case but in your consideration you are not
24 limited to the statements that have been made by the witnesses

40 = CHARGE

1 here in Court. In other words, you are not limited solely to
2 what you see and hear as the witness testifies. You are per-
3 mitted to draw from the facts which you find have been proved,
4 such reasonable inferences as you feel justified in the light
5 of your experience.

6 The law presumes that the defendant to
7 be innocent of a crime with which he is charged, although a
8 defendant is accused, he begins the trial with a clean slate
9 and the presumption of innocence continues throughout the
10 trial down to the time in the Jury room, if that time ever
11 comes, or ever does arrive, when you are satisfied from all
12 the evidence, beyond a reasonable doubt, the defendant is
13 guilty of the crime charged.

14 The law permits nothing but legal evi-
15 dence presented before this Jury to be considered in support
16 of any charge against the accused. So the presumption of
17 innocence alone, is sufficient to acquit the Defendant, unless
18 you are satisfied beyond a reasonable doubt of his guilt from
19 all of the evidence presented.

20 Now, the burden of proof is on the
21 Government to prove each element of the charges that are
22 asserted against the Defendant, beyond a reasonable doubt and
23 you cannot find the defendant guilty unless you determine
24 that the Government has established by the evidence, each and

1 every essential element of the crime charged against him,
2 beyond a reasonable doubt.

3 However, to support a verdict of guilty
4 you need not find every fact claimed by the Government, beyond
5 a reasonable doubt, you need only find that the crime charged
6 in each and all of the essential elements has been proven to
7 your satisfaction beyond a reasonable doubt from all of the
8 evidence presented here.

9 A reasonable doubt is a fair doubt
10 based upon reason and common sense arising from the state of
11 the evidence. By proof beyond a reasonable doubt you are not
12 to understand that all doubt is to be excluded. It is rarely
13 possible to prove anything to an absolute certainty. It must
14 be a substantial doubt, such as would make an honest and
15 sensible and fair-minded person hesitate to act in a serious
16 and important matter wherein ascertainment of the proof was
17 conscientiously being sought.

18 A reasonable doubt may arise not only
19 from the evidence produced but from, also from the lack of
20 evidence and the law never imposes upon a defendant in a crim-
21 inal case, the burden or duty of producing any evidence and
22 since the burden is always upon the Government to prove the
23 accused guilty by proving beyond a reasonable doubt every
24 essential element of the crime charged, a defendant has a right

1 to rely upon the failure of the prosecution to establish such
2 proof.

3 A defendant may also rely on evidence
4 brought out on cross-examination of witnesses for the Govern-
5 ment and if after impartial consideration of all of the evi-
6 dence you can candidly say that you are not satisfied of the
7 guilt of the defendant, beyond a reasonable doubt, you should
8 find him not guilty.

9 Again, I have indicated there are two
10 types of evidence which you may consider in determining
11 whether the defendant is guilty as charged. One, is direct
12 evidence, such as the testimony of an eye witness. The other
13 is circumstantial evidence which consists of proof of the
14 chain of circumstances from which a conclusion regarding
15 essential facts in the case may logically be drawn. But
16 regardless of the nature of the evidence, whether direct or
17 circumstantial, the law requires that before convicting a
18 defendant you, the jury, must be satisfied of the defendant's
19 guilt beyond a reasonable doubt and circumstantial evidence is
20 entirely legal and proper for you to consider and you may con-
21 vict on this class of evidence alone, if thereby you are per-
22 suaded, beyond a reasonable doubt, of the defendant's guilt.
23 But, circumstances must be such as will leave the guarded
24 discretion of a just and reasonable man or woman to the

1 conclusion that the crime charged has been committed and that
2 the defendant is guilty of its commission.

3 Now, there has been testimony in this
4 case that the defendant made a number of statements tending to
5 show that he is, his innocence, at the time he was inspected
6 at the border.

7 There has also been testimony that these
8 statements were false. There is also testimony that the
9 Defendant made certain statements at the time he was arrested
10 in Connecticut. And there is testimony that these, that
11 that statement was false.

12 Now, exculpatory statements, statements
13 tending to prove the innocence, when shown to be false, are
14 circumstantial evidence of guilty consciousness and have
15 independent probative force and if you find that the defendant
16 made certain statements about his trip to and from CANADA and
17 about his acquaintance with STEPHEN LOEWE and that such state-
18 ments were determined to be false, you may find such exculpa-
19 tory statements were made either because the defendant had a
20 guilty conscience or, as the defendant has explained, that
21 he was confronted suddenly with simply a situation implicating
22 him with the commission of a serious crime and that he made
23 these statements out of apprehension of the predicament in
24 which he found himself.

1 If you find that the defendant made
2 certain statements that were found to have been false con-
3 cerning his trip to and from CANADA and concerning his ac-
4 quaintanceship with STEPHEN LOEWE, after the drugs were found
5 and secreted in Loewe's car, such finding of fact by you
6 is a circumstance which may be weighed by you in determining
7 whether or not the defendant knew, or should have known, that
8 the drugs were hidden in the car.

9 Now a separate crime or offense is
10 charged in each of the three counts of the indictment that
11 are before you. Each charge, and the evidence pertaining to
12 that charge, should be considered separately the fact that
13 you may find the accused guilty or not guilty as to one of
14 the counts charged should not control your verdict as to any
15 of the other offenses charged.

16 Now, Count One of the indictment
17 charges that on or about November first, 1973 up and to, up
18 to and including January tenth, 1974, in the District of
19 Vermont and elsewhere, RAYMOND JOHNSON, the Defendant, un-
20 lawfully, wilfully and knowingly did combine, conspire to and
21 agree, together with STEPHEN LOEWE, named as his co-conspira-
22 tor and with other persons, to the Grand Jury unknown, to com-
23 mit offenses against the UNITED STATES, namely, to violate
24 Sections 812 and 952 (a) of Title 21 of the United States

1 Code, and, this is the Conspiracy Count, and this Count al-
2 leges that it was a part of the conspiracy that the conspira-
3 tors, RAYMOND JOHNSON and STEPHEN LOEWE, knowingly and inten-
4 tionally, import into the United States from a place outside
5 thereof, quantities of methamphetamine a Schedule Two control-
6 led substance, in violation of Section 812 and 952 (a) of
7 Title 21 of the United States Code. And the indictment fur-
8 ther alleges that as part of the conspiracy and to effect the
9 objects thereof, certain overt acts were committed. Among
10 others, and these acts were committed within the District of
11 Vermont, namely, on or about December 28, 1973, STEPHEN LOEWE
12 drove an automobile into the UNITED STATES from CANADA.

13 The Government relies on that overt act
14 alone, although the second charge of an overt act, that on or
15 about December 28, 1973, RAYMOND JOHNSON made a statement to
16 Garry GARDNER. The Government does not rely upon that, as
17 the Court understands it, as a basis for its conspiracy charge,
18 so that we are only to consider the single overt act that I
19 have referred to.

20 Now, the conspiracy counts charges, the
21 conspiracy was directed to violate certain laws of the UNITED
22 STATES.

23 Now, the Drug Abuse and Prevention and
24 Control Acts, provide it shall be unlawful to import into the

1 UNITED STATES, from any place outside thereof, any non, any
2 controlled substance specified in the various schedules that
3 are named in the Drug Abuse, Prevention and Control Act.

4 Now, Section 812 that is referred to,
5 Congress has established five schedules of controlled sub-
6 stances to be known as Scheduled 1, 2, 3, 4, 5. Now, when
7 the Federal Drug Act was enacted, the Congress provided these
8 schedules and specified the controlled substances that were
9 to be included and when this Act was enacted any injectible
10 liquid which contained quantities of methamphetamine, was a
11 controlled substance. Later, on July 7, 1971, pursuant to
12 authority conferred in the Act itself, the Attorney General of
13 The United States, pursuant to rules and regulations specified
14 in the Act, added, "any form of methamphetamine" that is, not
15 just liquid, but any form of methamphetamine as a Schedule Two
16 controlled substance.

17 Now, a Schedule Two controlled substance
18 means a drug or any other substance that has a high potential
19 for abuse, be it a drug or other substances has a current ac-
20 cepted medical use in treatment in the United States or a
21 currently accepted medical use with certain severe restric-
22 tions and abuse of the drug or any other substance may lead
23 to severe psychological and physical dependence.

24 Now, these are the statutes that the

1 conspiracy claims, charges, the defendant violated.
2 Now, before a Defendant may be found guilty of a crime, the
3 prosecution must prove by the required measure of proof that
4 under the statute that I have referred to and other statutes
5 that may relate to other counts, the defendant was forbidden
6 to do the act charged in the indictment and that he intention-
7 ally committed the act.

8 Now, an act is done knowingly, if its
9 done voluntarily, intentionally and not because of mistake,
10 accident, or other innocent reason. The purpose of adding the
11 word "knowingly" was to assure that no one would be convicted
12 for an act done because of mistake, or an accident, or again,
13 some other innocent reason.

14 As stated before with respect to an
15 offense such as charged in this case, specific intent must be
16 proved beyond a reasonable doubt before there can be a convic-
17 tion.

18 Now, the statute refers to the word
19 "unlawfully". That means, contrary to the law. So the mean-
20 ing of the word unlawfully, means to do something wilfully,
21 that is contrary to the law. And an act is done wilfully if
22 it's done voluntarily and intentionally and with the specific
23 intent to do something that the law forbids. That is to say,
24 with a bad purpose, either to disobey or to disregard the law.

1 Now then, in order to find the defendant
2 guilty of conspiracy as charged in Count One of the indictment
3 you must find, beyond a reasonable doubt, first, that at some
4 time during the period from on or about November first, 1973,
5 to January 10, 1974 an agreement existed between at least two
6 of the conspirators. That is, between RAYMOND JOHNSON and
7 STEPHEN LOEWE.

8 Second, that it was an object of the, -
9 of this agreement, to distribute, to import, strike the
10 distribute, to import and possess with intent - I'm sorry.
11 Secondly, that it was the object of the agreement to import
12 into the United States a controlled substance such as metham-
13 phetamine.

14 Third, in order to find the defendant
15 guilty of the crime of conspiracy, you will recall that I
16 instructed you some time during the trial that the guilt is a
17 personal thing and you must find beyond a reasonable doubt,
18 that the defendant willingly associated himself with the con-
19 spiracy and participated in it.

20 Fourth, that one of the conspirators
21 knowingly committed that at least one of the overt acts set
22 forth in the indictment at or about the time and place al-
23 leged. And that such overt act was knowingly done in further-
24 ance of some object or purpose of the conspiracy.

1 Now, what is a conspiracy? A conspiracy
2 is a combination or agreement of two or more persons, by a
3 concerted action, to accomplish a criminal or unlawful act by a
4 criminal or unlawful means.

5 The gist of the crime of conspiracy is
6 the unlawful combination or agreement to violate the law.
7 Whether or not the defendants accomplished what is alleged
8 they conspired to do, is immaterial to the question of guilt
9 or innocence.

10 A conspiracy is sometimes or has some
11 times been called a partnership in a criminal purpose in which
12 each member becomes the act of the other. However, to estab-
13 lish that a conspiracy existed, the Government is not required
14 to show that two persons got together and entered into a
15 solemn contract, orally or in writing, stating that they had
16 formed a conspiracy to violate the law and setting forth the
17 details of their plans. The means by which the unlawful ob-
18 ject is to be carried out or the part to be played by each
19 conspirator. Indeed, it would be extraordinary if there were
20 such a formal agreement.

21 Your common sense will tell you that
22 when persons in fact, undertake to enter into a criminal
23 conspiracy, much is left to unexpressed understanding. Con-
24 spirators do not usually reduce their agreement to writing or

1 acknowledge it openly or between themselves, nor will they
2 publicly broadcast their plans. By its very nature, a con-
3 spiracy is usually characterized by secrecy, rendering detec-
4 tion difficult. Thus, it is sufficient if two or more persons
5 in any manner, through any contrivance, impliedly or tacitly
6 come to a common understanding to violate the law. Express
7 language or specific words are not required to indicate assent
8 or attachment to a conspiracy.

9 In determining whether there has been
10 an unlawful agreement, you may judge acts in conduct of the
11 members of the conspiracy, that is Mr. LOEWE and Mr. JOHNSON,
12 to enter into and to carry out an apparent criminal purpose.
13 Usually the only evidence available is that of disconnected
14 acts on the part of the alleged individual conspirators, which
15 acts, however, when taken together, in connection with each
16 other and with the reasonable inferences to be drawn therefrom,
17 show a conspiracy or agreement to secure a particular result
18 as satisfactorily and conclusively as more direct proof and
19 if, upon consideration of all the evidence, direct or circum-
20 stantial, you find beyond a reasonable doubt that the minds
21 of the two alleged conspirators, met in an understanding way
22 and that they agreed as I have explained a conspiratorial
23 agreement to you, to work together in furtherance of an unlaw-
24 ful scheme alleged in the indictment, then proof of the

1 existence of the conspiracy is established.

2 The indictment charges that a conspiracy
3 existed from, or, - November first 1973 and thereafter, up to
4 January 10, 1974. Now, you need not find that the conspiracy
5 began exactly on November first, 1973 and came to an end on
6 January 10, 1974. If you find that at some time during this
7 period which began during the times indicated the conspiracy
8 existed, that is sufficient.

9 Now, once satisfied that the conspiracy
10 charge existed, you must then determine whether, who its
11 members were. In deciding whether the defendant was a member
12 of the conspiracy, you should consider from all of the evi-
13 dence whether the defendant knowingly and purposely entered
14 the conspiracy. And in determining whether he became a
15 member of the conspiracy you must determine not only whether
16 he participated in it, but whether he did so with knowledge
17 of its unlawful purpose. Did he join with STEPHEN LOEWE in
18 some of the basic aims and purposes, unlawful purposes, that
19 were alleged in the indictment?

20 Now, knowledge is usually a matter of
21 inference from facts proved. It is not necessary that the
22 defendant be fully informed as to the details of the scope of
23 the unlawful agreement in order to justify any inference or
24 knowledge on his part. To have guilty knowledge, the defendant

1 need not know the full extent of what his co-conspirator was
2 doing in all of his activities as an actor.

3 I want to caution you, however, that
4 mere association by one or more of the conspirators does not
5 make out that the defendant was a member of the conspiracy,
6 nor is knowledge, without participation, sufficient. It is
7 necessary for the defendant to actually participate with
8 knowledge of some of the purposes of the conspiracy and with
9 the intent to aid in the accomplishment of its purposes.

10 So, if you find the conspiracy did exist
11 and the defendant knowingly participated in it, the extent of
12 his participation has no bearing on his guilt or innocence.
13 The guilt of the conspiracy is not measured by the extent or
14 the duration of the defendant's participation even if he par-
15 ticipated in it to a degree more limited than that of his co-
16 conspirators is equally culpable so long as he was in fact,
17 a conspirator.

18 Now, if you find by the required proof
19 that a conspiracy did exist and had as one of its objects the
20 import, unlawful importation of methamphetamine from out-
21 side the United States, into the United States and that
22 STEPHEN LOEWE was a member of the conspiracy with him, then
23 there still remains a fourth factor that must be established
24 and the fourth requirement is that there be an overt act.

1 You may not find a defendant guilty
2 of a conspiracy unless and until you are convinced that at
3 least one overt act charged in the indictment was committed
4 by at least one of the conspirators. So then, the offense of
5 conspiracy is complete when the unlawful agreement is made
6 out and an overt act is done by a conspirator to accomplish
7 the object of the conspiracy. Thus, the overt act required
8 is one which furthers the objectives or purposes of the con-
9 spiracy. It does not have to be a criminal act or an act
10 which of itself, constitutes an object of the conspiracy, it
11 may be an act which is innocent on its face. Such as driving
12 an automobile. But it must be of such character that it
13 furthers or promotes or aids and assists in the accomplishment
14 of the purposes of the conspiracy. Thus the overt act upon
15 which the Government relies is that on or about December 28,
16 1973, STEPHEN LOEWE drove an automobile into the United States
17 from Canada, the Government must prove and satisfy you by the
18 required proof, that this act was committed as an overt act
19 alleged in the indictment and it was done in furtherance of
20 the conspiracy.

21 Now, when it appears beyond a reasonable
22 doubt from the evidence in the case that a conspiracy existed
23 and that the defendant was one of its members, then the
24 statements thereafter, knowingly made, and the acts thereafter,

1 knowingly done by any person found to be a member of the
2 conspiracy, may be considered by you, the Jury, as evidence
3 in the case as to the defendant who was found to be a member
4 of the conspiracy even though the statements and acts may
5 have occurred in his absence and without the knowledge of the
6 defendant, provided such statements and acts were knowingly
7 done and made during the continuance of the conspiracy and in
8 furtherance of its object. Otherwise, any admission or in-
9 criminating statement made or an act done outside of court
10 by one person may^{not} be considered as evidence against any person
11 who was not present, and did not hear the statement made, or,
12 see the act done.

13 Therefore, any statements of any con-
14 spirator which are not in furtherance of the conspiracy, or
15 made before it existed, or after its termination, may be con-
16 sidered only against the person making them.

17 Now, Count Two charges that on or about
18 the 28th day of December 1973 in the judicial District of
19 Vermont, RAYMOND JOHNSON, the defendant, did unlawfully, know-
20 ingly and wilfully import into the United States from a place
21 outside thereof, approximately one and one-half pounds of
22 methamphetamine, a Schedule Two controlled substance.

23 There are two statutes that are alleged
24 to have been violated in this connection. First is 952(b),

1 which is set forth in the, this count of the indictment and
2 that Section 952(b) of Title 21 of the United States Code and
3 that section provides - in the pertinent part - that it shall
4 be unlawful to import into the United States from any place
5 outside thereof, any controlled substance. In Schedule Two.

6 The second statute involved in the case
7 is Section 2 of Title 18 of the United States Code which reads
8 in part as follows: "Whoever commits an offense against the
9 United States, or aids and abets, counsels, commands, induces
10 or procures its commission, is punishable as a principal."

11 So on the evidence presented here, before
12 you can find the defendant guilty of the crime charged in
13 Count Two of the indictment, you must be convinced, beyond a
14 reasonable doubt, that the Government has proved the following
15 elements:

16 First, that on or about December 28,
17 1973, STEPHEN LOEWE brought a controlled substance into the
18 United States from a place outside thereof and that he did so
19 unlawfully, wilfully and knowingly.

20 Third, that RAYMOND JOHNSON, the Defend-
21 ant, on trial here today, aided and abetted and counseled
22 LOEWE in committing this act.

23 Lastly, that JOHNSON did so unlawfully,
24 wilfully and knowingly.

1 The indictment charges that the con-
2 trolled substance which LOEWE brought into the United States
3 was methamphetamine and I instruct you as a matter of law, on
4 the present record, that methamphetamine, is a Schedule Two
5 controlled substance. You, however, must still find beyond
6 a reasonable doubt whether the imported substance was in fact,
7 methamphetamine. The Government is not required to prove the
8 exact amount of the substance.

9 Now again, the term unlawfully, I have
10 referred to before. It has the same general meaning that it
11 has here. The term unlawfully, wilfully and knowingly, means
12 that you must be satisfied that the defendant knew what he
13 was doing and that he did it deliberately and voluntarily,
14 as opposed to something done accidentally, mistakenly or as a
15 result of some coercion, or mistake.

16 Of course, it is not necessary that the
17 defendant knew he was violating any particular law, rather, it
18 is sufficient if you are convinced that, beyond a reasonable
19 doubt, that he was aware of the general unlawful nature of
20 his act.

21 Now, to sustain the conviction of one
22 who has been charged as an aider and abettor, it is necessary
23 there be evidence showing that the offense has been committed
24 by the principle, STEPHEN LOEWE, and that LOEWE was aided and

1 abetted by the accused, Mr. JOHNSON.

2 And you should understand that under
3 Title 18, Section 2, that is referred to and charged in the
4 indictment, a person who aids and abets another in committing
5 an offense is just as guilty of that offense as if he commit-
6 ted it himself.

7 Now conviction of the offense of aiding
8 and abetting, requires that the accused, in some sort, assoc-
9 iated himself with the venture and that he participated in it
10 as something he wished to bring about and that he seeks to,
11 by his action, to make it succeed. But knowledge that a crime
12 is being committed even when coupled with the presence at the
13 scene of its commission, is generally not enough to constitute
14 aiding and abetting.

15 So the mere furnishing of company to a
16 person engaged in crime does not render the companion an aider
17 or abettor. An aider and abettor must be a participant rather
18 than a knowing spectator and to determine whether the defendant
19 aided and abetted in the importation of methamphetamine, you
20 should require, you should inquire, did the defendant assoc-
21 iate himself with the venture. Did he participate in it as
22 something he wished to have accomplished? Did he seek, by his
23 action, to make it succeed? And if you are persuaded, beyond
24 a reasonable doubt, that he did, then the Defendant may be

1 found guilty as an aider and abettor.

2 Count Three charges that on or about the
3 28th day of December in the Judicial District of Vermont,
4 RAYMOND JOHNSON did, unlawfully, knowingly and wilfully, po-
5 sess with intent to distribute approximately one and a half
6 pounds of methamphetamine, a Schedule Two controlled substance
7 in violation of Section 841 of Title 21 of United States Code
8 and Section 2 of Title 18 of United States Code.

9 Now, the charge in Count Three relates
10 to violations of these sections that I have referred to and
11 Section 841 provides that it shall be unlawful for any person
12 knowingly or intentionally to distribute or possess with in-
13 tent to distribute, a controlled substance.

14 The other statute mentioned in count,
15 of this count, or the, of the indictment, is as in the prev-
16 ious count, Section 2 of Title 18, which provides as I have
17 indicated, that whoever commits an offense against the United
18 States, or aids, abets, counsels, commands, induces or pro-
19 cures its commission, is punishable as a principle. Now, the
20 word "intent" refers to a person's state of mind. So the
21 term, "possess with intent to distribute" can fairly be stated
22 to mean to control an item with a state of mind or purpose,
23 to distribute it at some time in the future.

24 You should also note that in connection

1 with this element and this count of the indictment, the
2 defendant is charged with aiding and abetting in the possession
3 of the methamphetamine with an intent to distribute.

4 I have instructed you as a matter of law
5 that methamphetamine is a Schedule Two controlled substance.
6 So, you are required to find, beyond a reasonable doubt,
7 whether the substance alleged to have been distributed here,
8 was methamphetamine.

9 Now, the second element is that the
10 defendant aided and abetted in the possession of methampheta-
11 mine, with the intent to distribute it.

12 Again, before you may find the defendant
13 guilty of this count in the indictment, you must be convinced
14 beyond a reasonable doubt, that the Government has proved
15 these elements. First, that on or about December 28, 1974, a
16 quantity of methamphetamine was possessed by someone with in-
17 tent to distribute it. Secondly, that the defendant aided
18 and abetted in the possession with intent to distribute.
19 Third, that the action of the defendant was done unlawfully,
20 wilfully and knowingly.

21 Now, the word "possession" has its
22 common, every-day meaning. That is, to have something within
23 your control. To have something within your control does not
24 necessarily mean you have to have it in your hand or in your

1 pocket. Control may be demonstrated by the existence of a
2 working relationship between the person having the control
3 and the person with actual physical custody.

4 Now, to recapitulate as to Count One,
5 if the Government has persuaded you, beyond a reasonable
6 doubt, each of the following facts. First, that the conspir-
7 acy described in the Count was wilfully formed and was in ex-
8 istence some time during the period from November 1, 1973 to
9 January 10, 1974.

10 Secondly, that the object of the con-
11 spiracy was to import methamphetamine from outside of the
12 United States into the United States.

13 Third, that the accused intentionally
14 became a member of the conspiracy.

15 Fourth, that one or more of the conspir-
16 ators, knowingly committed the overt act named in the indict-
17 ment at or about the time alleged and that the overt act was
18 knowingly done in furtherance of the purpose of the conspiracy.

19 If you find each of these elements, you
20 may find the accused guilty. If the Government's evidence has
21 failed to satisfy you, beyond a reasonable doubt, as to any
22 of these essential elements of the offense as to RAYMOND
23 JOHNSON, you will find him "not guilty" of the conspiracy.

24 Count Two is the importation charge and

1 if you are satisfied, beyond a reasonable doubt, of these
2 essential facts, first then on December 28, 1973, STEPHEN LOEWE
3 brought into the High Gate Springs Port of Entry, from
4 Canada, a quantity of methamphetamine, secondly, that LOEWE
5 did so unlawfully, wilfully and knowingly, thirdly, that the
6 defendant, RAYMOND JOHNSON, unlawfully, wilfully and knowingly
7 aided and abetted LOEWE. If these facts are established by
8 the required proof, you may find the accused "guilty" of Count
9 Two. If the evidence fails to persuade you, beyond a reason-
10 able doubt, as to each and all of these essential elements,
11 you will find the defendant, "not guilty" on Count Two.

12 And as to Count Three if the evidence
13 presented persuades you by the required proof, each of the
14 following essential elements, one, that on or about December
15 28th, 1973, a quantity of methamphetamine was possessed by
16 someone who, with the intent to distribute and control the
17 controlled substance, two, that the accused aided and abetted
18 in the possession of the methamphetamine with the intent to
19 distribute it, three, that the action of the defendant was
20 done unlawfully, wilfully and knowingly, then you may find
21 the accused "guilty" of Count Three. If you are not so satis-
22 fied by the required proof, you will find the defendant, "not
23 guilty" as to Count Three.

24 Now, you have been chosen as jurors in

1 this case, to try the issues of fact presented by the allega-
2 tions of the indictment and the denial made by the defendant
3 that he is not guilty and you are to perform the duty of
4 trying the facts without bias or prejudice to any party.

5 The law does not permit jurors to be
6 governed by sympathy, prejudice or public opinion. Both the
7 defendant and the public expect that you will carefully and
8 impartially consider all of the evidence in the case, follow
9 the law as stated by the Court, and reach a true and just
10 verdict. (11:23 a.m.)

11 Now, in this connection, I want to sug-
12 gest that you that the finding of facts in this case are
13 entirely for you and the law is for the Court and whatever
14 reference the Court has made to the evidence of the claims of
15 the parties, is only for the purpose of applying the principles
16 of law to the issues of fact in this case and without any
17 purpose of indicating in the least degree, how the Court may
18 think the case ought to be decided on the facts. That is for
19 you to determine and for you to determine, alone.

20 The exhibits which have been admitted
21 in the case during the trial, of course, are for your consider-
22 ation in the course of your deliberations.

23 You will be required in delivering your
24 verdict, to state your finding of guilty or not guilty as to

1 the defendant, on each count of the indictment. Your verdict
2 will be oral and will be announced by your Foreman when called
3 upon to do so by the Clerk, after you have reached a decision
4 in this case.

5 If, during the course of your delibera-
6 tions you have any questions that you wish to address to the
7 Court, you may give, make your inquiry and do it in writing
8 and have the questions signed by the Foreman and deliver it
9 to the Marshal and that will be delivered to me and I will
10 take whatever action I feel is appropriate under the circum-
11 stances.

12 If you need any of the evidence, any of
13 the testimony that is in the record referred to, the Court
14 requests that you make that known as far as, in advance as
15 possible, so that the Reporter may go through his notes and
16 find out what part of the testimony of the particular witness
17 you may wish to have read back.

18 The Court will entertain objections.

19 (11:35) AT THE BENCH OUT OF HEARING BY THE JURY:

20 MR. O'NEILL: Your Honor, I have some
21 disagreement with some parts of the charge but I have no
22 parts of it that I would request be changed, at this point in
23 time because I think they are too minor to take them into
24 context here.

1 MR. GIBSON: The Defendant would except
2 to the omission of the last sentence of Defendant's Requests
3 to Charge #11: "There has been evidence that defendant has
4 been convicted of prior criminal con-
5 duct. Such evidence bears only on the
6 matter of credibility of the defendant
7 as a witness. It is not to be considered
8 as bearing on the guilt or innocence of
9 the defendant in this case".

10 THE COURT: Just a second. We'll note
11 your objection.

12 MR. GIBSON: Also to the omission of
13 charging Requests Number 9 and 10:

14 "#9: This case involves circumstantial
15 evidence. If the circumstances, as you
16 find them, donot exclude every reason-
17 able hypothesis but that of guilt, then
18 you must find the defendant not guilty."

19 "#10: If you find that the circumst n-
20 tial evidence gives equal support to
21 opposite conclusions, concerning the
22 defendant's guilt or innocence, then you
23 must find the defendant not guilty."

24 THE COURT: We will note your objection
to #9.

MR. GIBSON: I also feel that I must
take exception to part of the Court's charge concerning false
exculpatory statements, the one point I believe the Court
stated that false exculpatory statements are evidence of guilty
consciousness and I believe the facts that it would have been
better to say there may be evidence of guilty consciousness, and -

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1 MR. O'NEILL: Your Honor, you, my recol-
2 lection seems to be that the Court said, "may be".

3 MR. GIBSON: At a later point, but I
4 think at a certain point he did not.

5 MR. O'NEILL: There is also given in the
6 alternative that it need not be considered that way either.
7 I think if, I think if the Court probably gave it in the
8 alternative later and that it not be considered that way.

9 THE COURT: Out of an abundance of cau-
10 tion, I will.

11 MR. GIBSON: The other - just, I just
12 have three further points, Your Honor, also, the one point I
13 think you referred to "knew, or should have known," of the
14 presence of the drugs. I must except to the phrase "or should
15 have known."

16 THE COURT: Yes. I think I know where
17 you are.

18 MR. GIBSON: The next point, - do you
19 wish me to go over any of those, Your Honor?

20 THE COURT: No, I think I've got them.

21 MR. GIBSON: Okay. At the point where
22 you are talking about conspiracy and membership in a conspiracy
23 although it was qualified later on, at one point I think you
24 stated something to the effect that the Jury could judge from

1 acts and conduct of members of the conspiracy, i.e., Mr. John F
2 son, Mr. Loewe, as though they were members, even though
3 later on you said that if you find them to be members and feel
4 that perhaps it would have been proper to include the words
5 "alleged Members," in that portion of the charge and I would
6 except to the omission of that word.

7 The final observation I have in ex-
8 ception would be that as I understand the charge that they could
9 find that the conspiracy, if there was one, could have been
10 formed after December 28th and prior to January tenth, but
11 the only overt act relied on by the Government occurred on
12 December 28th and that perhaps there should be some clarifica-
13 tion on that.

14 MR. O'NEILL: I didn't take that from
15 the context of the Charge, Your Honor. I think that will simply
16 be confusing.

17 THE COURT: I was thinking about the
18 acts of the co-conspirators. You are speaking about the acts
19 of the co-conspirators?

20 MR. GIBSON: No, I was talking about
21 the charge. The indictment was stated to be from November 1 to
22 January 10 that it need not have started on November and ended
23 on January 10, but that at some point in between those times,
24 that the Jury found the conspiracy had existed, did come into

1 existence and that it just seemed to me that since there was
2 some testimony as to events after December 28th, that it would
3 permit the Jury to determine that the conspiracy existed or
4 came into existence after December 28, but the only act relied
5 on by the Government, occurred on December 28th and that it
6 could be confusing to the Jury and I don't think it would be
7 proper to say that the conspiracy could have come into exist-
8 ence after December 28th for Mr. JOHNSON to be convicted of
9 Count One.

10 MR. O'NEILL: Your Honor, may I be
11 heard? The Court I think, clearly instructed the Jury in that
12 respect to the overt act, they had to find that the overt
13 act was in furtherance of the conspiracy. The act, how could
14 the act be in furtherance of the conspiracy if the conspiracy
15 didn't exist? If you are concerned about going into areas
16 such as that, only for the name's confusing. I don't see any
17 way the Jury could find that the conspiracy began after Decem-
18 ber 28th. Maybe they want to find that there was one before
19 that, or through that date that there wasn't one. I think
20 that it is inconceivable on the state of the evidence, that
21 is the problem that I am concerned about the possible confusion
22 on that if we start getting back into it.

23 MR. GIBSON: That's all I have, Your
24 Honor.

1 MR. O'NEILL: Your Honor, may I have,
2 I just have one perhaps I might have one amendment, I didn't
3 want to bring in, too minor a point, it wasn't going to be in
4 the instructions because I didn't want to take them out of
5 context. I would ask the Court to consider this. The Court,
6 Your Honor, has talked about reasonable doubt, or finding
7 beyond a reasonable doubt, or at least in one instance, if
8 you do not find the defendant guilty, beyond a reasonable
9 doubt, then you should find him "not guilty". Your Honor, we
10 think there is a sequel to that, that if you should find him
11 "guilty" beyond, if you find that he is guilty beyond a reason-
12 able doubt, you should find him guilty. The Court indicated
13 that you may find him not guilty at one point, if that stand-
14 ard isn't met. Well, must find him not guilty but may find him
15 guilty if it goes beyond. We think it goes two ways, Your
16 Honor, that's all.

17 THE COURT: Well, I don't think I'll get
18 into that. I charged reasonable doubt and that is it.

19 MR. GIBSON: I believe at one point the
20 Court said false exculpatory statements are evidence of guilty
21 consciousness and I think it would have been preferable to
22 state that those statements may be evidence of guilty conscious-
23 ness.

24 THE COURT: I said they are circumstantial

1 evidence.

2 MR. GIBSON: Of guilty consciousness I
3 think. I thought the word "are" should have been made. I
4 think this is later on in that same general passage where you
5 used the words, "or should have known". I think it is after
6 the "are" so I am quite certain it was after the one where you
7 were talking about "are evidence."

8 (11:43 A.M.) COUNSEL AND REPORTER RESUMED NORMAL SEATS

9 THE COURT: Counsel have brought to my
10 attention a point that may cause some misunderstanding in re-
11 gard to my instructions regarding false exculpatory statements.
12 I want to point out to you that exculpatory statements, when
13 shown to be false, may be considered by you as circumstantial
14 evidence of guilty consciousness and if you so find you may
15 consider that evidence as having a probative effect. Also,
16 in the same connection, if you find that the defendant made
17 certain statements there were found to have been subsequently
18 false, concerning his trip to Canada and concerning his ac-
19 quaintanceship with STEPHEN LOEWE, after the drugs were found
20 secreted in Loewe's car, such a finding of fact, by you, is a
21 circumstance to be weighed by you in determining whether or
22 not the defendant knew that the drugs were hidden in the car,
23 whether or not he did know. And in that connection it's not
24 whether he should have known but whether he actually knew.

1 Now, as to each and every count in the
2 indictment, if the Government's evidence persuades you beyond
3 a reasonable doubt as to each and all of the elements to each
4 crime charged in that particular count, you will find the
5 defendant "guilty". If the Government's evidence fails to
6 persuade you, beyond a reasonable doubt, as to each essential
7 element as to the offenses charged in the several counts,
8 you will find the defendant "not guilty". Anything further?

9 MR. GIBSON: That is all.

10 MR. O'NEILL: Nothing.

11 THE COURT: The Marshal will come forward
12 to be sworn.

13 (Marshal sworn by the Clerk at 11:59 a.m.)

14 THE COURT: The Court at this time will
15 excuse you, Mrs. CIOFFI and Mrs. ALLEN and we will express
16 our appreciation for your attendance throughout the trial
17 even though you haven't been called upon to participate in
18 the deliberations, final deliberations and the verdict, but
19 you will - you have been here as stand-by, in a stand-by
20 capacity but your services are highly important and you are
21 excused at this time and it doesn't appear that we will need
22 your services in the immediate future. We have no further
23 jury work scheduled for the remainder of this month but in
24 any event if you are needed for some reason, the Clerk will

COPY

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
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United States

v.

Raymond Johnson

Criminal Action

File No. 74-36

MEMORANDUM AND ORDER

After trial and verdict of guilty on Counts I and II, and not guilty verdict on Count III, the defendant Raymond Johnson has moved to arrest the judgment of guilt on Count I, for judgment of acquittal on Counts I and II and for a new trial. Count I alleges a conspiracy to violate U.S.C. §§ 812 and 952(a), in the importation into the United States of quantities of methamphetamine, a Schedule II controlled substance. Count II accused the defendant of unlawful possession with intent to distribute one and a half pounds of methamphetamine, a Schedule II controlled substance. The defendant was found not guilty of possession with intent to distribute one and a half pounds of methamphetamine. The date of all offenses is alleged to have been December 28, 1973. The verdict of guilty has been challenged by a motion to arrest the judgment on Count I, a motion for judgment of acquittal, and for a new trial on Counts I and II.

Motion to Arrest

The premise for the motion to arrest the judgment and dismiss Count I is that the conspiracy count and the offense charged of unlawful possession have been merged with the result that the defendant has been exposed to double jeopardy. The argument is advanced on Justice Rutledge's dissent in United States v. Pinkerton, 328 U.S. 640, 649-650 (1946). The majority of the Court, however, by Justice Douglas, rejected -

" . . . the proposition that the substantive offenses were merged in the conspiracy. - And the plea of double jeopardy is no defense to a conviction for both offenses." Id. at 643.

Conspiring to commit a crime is an offense separate and distinct from the crime which the conspirators designed to accomplish. Pereira v. United States, 347 U.S. 1, 11 (1953); McDonald v. United States, 246 F.2d 727, 728 (2d Cir. 1957).

Motion for Acquittal

The defendant contends that the mere presence of the defendant in the automobile where the contraband was found is not sufficient to convict the accused of unlawful possession. This proposition is well founded, as far as it goes. See e.g. United States v. Lopez-Ortiz, 492 F.2d 109, 115 (5th Cir. 1974). And doubtful statements inspired by apprehension of arrest in the hope of extrication, consistent with innocence, will not generate proof of mere presence into unlawful possession. See United States v. Kearse, 444 F.2d 62, 64 (2d Cir. 1971). Here the fabric of the proof has more substance.

The defendant Johnson and his co-defendant Loewe had been close friends for about ten years and were boyhood friends in Milford, Connecticut, before Loewe moved to Walpole, New Hampshire. The friendship continued and Loewe and Johnson visited each other on the average of twenty-five times each year and had frequent telephone calls. In February, 1973, Loewe and Johnson were arrested in New Jersey on charges of transportation in a trailer of stolen motorcycles. The charges were later reduced. Loewe pleaded guilty to offense of disorderly conduct and entering the State of New Jersey for an illegal purpose. Johnson entered a plea of guilty to entering New Jersey for an unlawful purpose. Loewe was also convicted of motor vehicle theft in 1973 by the Commonwealth of Massachusetts. Johnson knew of these convictions and was also aware of the fact that Loewe was on probation and was not permitted to leave his home state of New Hampshire.

Loewe made frequent trips to Montreal for the purpose of trafficking in controlled substances. According to Loewe's testimony, he made other trips to Canada that did not involve the purchase and transportation of drugs. Both Loewe and Johnson testified that they made a trip to Canada in October or November, 1973. They denied a prior trip in December, 1973. However, the records of the Immigration Service establish that Loewe and Johnson entered the United States from Canada at the Highgate port of entry on December 9, 1973. Loewe was addicted to narcotics and supported himself and his habit by the purchase and sale of methamphetamine. His connection and source of supply was a dealer in Montreal. His trips to Canada were made about every ten days.

On December 26, 1973, Johnson traveled in stormy weather to Walpole, New Hampshire, and telephoned Loewe on his arrival. After a brief stay they proceeded on icy roads from Walpole to St. Jean, Quebec, after entering Canada from New York. They registered late in the day at a motel at that location. According to the testimony of both Loewe and Johnson, the purpose of the trip was to buy motorcycle parts. The pair watched television during the evening. Johnson testified he went to sleep at 9:00 P.M. Loewe's story was that he remained awake until about 2:00 A.M. on December 27, when he departed for a prearranged meeting with his "connection" at a bar in Montreal. The transaction was accomplished as planned. Loewe purchased a substantial amount of methamphetamine for \$3,500. He testified he concealed the purchases by removing the door panel and placing the contraband in the door cavity and replacing the panel. He testified he returned to the motel room at St. Jean without awaking Johnson. When Johnson awoke about 9:00 A.M. the two left the motel for Montreal. There they spent the day in fruitless effort to locate motorcycle parts. When they learned there was no auction of police motorcycles and equipment, they wandered aimlessly from eating houses to bars. They slept in Loewe's car in a parking lot on the night of December 27-28, 1973. On December 28, 1973, they made the return journey to the United States and sought entry at Highgate.

They arrived at the point of entry with Loewe operating the vehicle. Johnson was seated on the passenger side of the front seat. After a primary inspection by an investigation inspector, the vehicle and its occupants were referred to a customs official for a more thorough inspection. Johnson appeared highly nervous and upset. The U.S. Customs Inspector Hamilton did a thorough search of the vehicle with a flashlight and metal prod. He observed a piece of plastic protruding from the lower door cavity of the right front door. Directing the beam down the door cavity from the window opening, he detected two plastic bags which contained 525 grains of methamphetamine. Gary Gardner, special agent, United States Customs Service, Burlington, was summoned.

In the interim Johnson and Loewe were directed to the customs office. They were informed they were being detained for suspected contraband. The Inspector Kiriery read the Miranda warnings to both subjects. They elected to remain silent and no interrogation was conducted pending the arrival of Special Agent Gardner.

While seated together at the customs house, Johnson and Loewe had the opportunity to communicate. During this interval Johnson inquired of one of the officials on duty, if his predicament would be bettered if the investigating officer knew that Johnson was hitchhiking when he was picked up by Loewe. Both Johnson and Loewe had learned, when confined in New Jersey, of a successful fabrication of a hitchhiking story as an exculpatory ruse available to a passenger in a vehicle transporting contraband. Johnson

went on to state that he had entered Canada to visit a girlfriend at St. Jean, Quebec, that he couldn't locate her and was returning home when he was given a ride by Loewe. He stated he had never seen Loewe before this chance meeting. Both Johnson and Loewe adhered to this fabrication throughout the questioning at Highgate. The deception achieved some success for Johnson; he was released.

The deception was discovered by further investigation. Johnson was indicted and later arrested in Milford, Connecticut on January 8, 1974. When Johnson inquired about the reason for his arrest, he was informed by the arresting officer that it concerned his entry into the United States from Canada. Johnson made a further false exculpatory statement, declaring spontaneously that he had never been in Canada.

During the trial the credibility of both Loewe and Johnson was substantially destroyed. The jury was justified in concluding that their combined testimony of Johnson's total ignorance of Loewe's criminal activity was unworthy of belief. See United States v. Pui Kan Lam, 483 F.2d 1202, 1208 (2d Cir. 1973).

The jury's verdict of guilt on the importation count and its acquittal of the defendant on the possession charge are not repugnant. The offenses are not identical.

Consistency in the verdict is not necessary. Each count in an indictment is regarded as if was a separate indictment.

Dunn v. United States, 284 U.S. 390, 393 (1931).
See also United States v. Abrams, 427 F.2d 86, 90 (2d Cir. 1970); United States v. Eisenmann, 396 F.2d 565, 568 (2d Cir. 1968).

The totality of the proof, including the false exculpatory statements of the accused constituted substantial evidence of guilt as to Counts I and II.

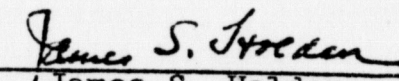
Giving full deference to the jury's province to determine credibility, to weigh the evidence and draw reasonable inferences from the facts presented, the triers of the fact, as just and rational men and women, were justified in their conclusion that the defendant was guilty of the conspiracy and importation counts beyond a reasonable doubt. United States v. Taylor, 464 F.2d 240, 243 (2d Cir. 1972).

The defendant's motion for judgment of acquittal and for a new trial for want of substantial evidence of guilt must be denied.

The motion for a new trial for error assigned to evidentiary rulings and to the court's instructions in submitting the case ^{1/} do not demonstrate cause for setting aside the jury's verdict and ordering a retrial.

The defendant's motions in arrest of judgment, for judgment of acquittal and for a new trial are denied.

Dated at Montpelier, in the District of Vermont, this 10th day of October, 1974.



James S. Holden
Chief Judge

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X

Footnote

- 1/ The court determined, absent the jury's presence, that the defendant's Miranda rights were competently and faithfully observed. The court rejected the defendant's requested instruction to the effect that to convict the circumstantial evidence must exclude every reasonable hypothesis but that of guilt. See Holland v. United States, 348 U.S. 121, 139-140 (1954); United States v. Taylor, supra, 464 F.2d at 244.

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

STEPHEN LOEWE and
RAYMOND JOHNSON

C. No. 74-7
§§812, 841(a)(1), 841(b)
(1)(B), 952(a), 960(a)
(1), 960(b)(2), Title 21;
§545, Title 18,
United States Code

COUNT I

The Grand Jury charges:

On or about the 29th day of December, 1973, in the Judicial District of Vermont, STEPHEN LOEWE and RAYMOND JOHNSON, the defendants, unlawfully, knowingly and willfully did import into the United States from a place outside thereof approximately two pounds of methamphetamine, a Schedule II controlled substance; in violation of §§812, 952, 960(a)(1) and 960(b)(2), Title 21, United States Code, and Section 2, Title 18, United States Code.

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COUNT II

The Grand Jury further charges:

On or about the 29th day of December, 1973, in the Judicial District of Vermont, STEPHEN LOEWE and RAYMOND JOHNSON, the defendants, unlawfully knowingly and willfully did possess with intent to distribute and dispense approximately two pounds of methamphetamine, a Schedule II controlled substance; in violation of §§841(a)(1) and 841(b)(1)(B), Title 21, United States Code, and Section 2, Title 18, United States Code.

COUNT III

The Grand Jury further charges:

On or about the 29th day of December, 1973, in the Judicial District of Vermont, STEPHEN LOEWE and RAYMOND JOHNSON, the defendants, unlawfully, willfully, knowingly and fraudulently did import into the United States merchandise contrary to law, to wit, approximately two pounds of methamphetamine, a Schedule II controlled substance; in violation of §545, Title 18, United States Code, and Section 2, Title 18, United States Code.

A TRUE BILL

Ann L. Barr
Foreman

GEORGE W. F. COOK
UNITED STATES ATTORNEY

By JEROME F. O'NEILL
JEROME F. O'NEILL
ASSISTANT U. S. ATTORNEY

DATE: January 10, 1974

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

HOLDEN

D. C. Form No. 100 Rev.

Sec Cr. 74-36

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	U. S. Attorney
STEPHEN LOEWE and OUT RAYMOND JOHNSON	
	For Defendant: Loewe: David Yarnell, Esq. (Apt) 8-10 Congress Street St. Albans, VT 05478
	For Johnson: David A. Gibson, Esq. (Apt) 139 Main St. Brattleboro, VT 05301

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed FEB 5 1974	Clerk				
J.S. 3 mailed AUG 5 1974 LCP	Marshal				
NOV 5 1974 JCN	Docket fee				
Violation					
Title 18 & 21					
Sec. 812,841(a)(1), 841(b)(1)(B), 952(a), 960(a)(1), 960(b)(2), 545					

DATE	PROCEEDINGS	
1974		
Jan. 2	Filed Magistrate's Complaint as to Deft. Loewe.	1. ✓
" "	Filed Magistrate's Order Specifying Methods and Conditions of Release as to Deft. Loewe.	2. ✓
" "	Filed Appointment of David Yarnell, Esqs. for Deft. Loewe.	3. ✓
" 8	Filed Magistrate's Complaint as to Deft. Johnson.	4. ✓
" 10	Filed Record of Grand Jurors Concurring.	
" "	Filed Indictment in violation of Sections 812,841(a)(1), 841(b)(1)(B), 952(a), 960(a)(1), 960(b)(2), Title 21; Sec. 545 Title 18, United States Code.	5.
* " 18	In Court before Judge Holden, Defendant Loewe present with his Attorney, David Yarnell, Esq., William Gray, Esq. for Government. For Arraignment.	
" "	Court makes inquiries of Deft. Loewe before plea.	
" "	Defendant Loewe waives reading of Indictment and enters a plea of not guilty as to all counts.	
" "	Mr. Gray moves that bail be continued in amount of \$5,000.00.	
" "	Mr. Yarnell states Deft. Loewe cannot raise amount of bail.	
" "	ORDERED: that bail be continued in sum of \$5,000.00. Case continued for one week to allow filing of pre-trial motions.	
XXXXXX	FILED MAGISTRATE'S COMPLAINT AS TO DEFT. JOHNSON	

DATE 1974	PROCEEDINGS	
Jan. 18 1974	Filed Waiver of Defendant's presence. (Loewe)	6. ✓
Feb. 1	In Court before Judge Holden. Defendant Loewe present with his Atty. David M. Yarnell, Esq., for change of plea.	
" "	Defendant waives reading of Indictment as to Count II.	
" "	Court makes inquiries of Deft. Loewe before change of plea.	
" "	Statements made to Court by Mr. O'Neill as to facts of case.	
" "	Deft. Loewe asks, has leave of Court to, and does withdraw his plea of not guilty as to Count II and enters a plea of guilty as to Count II.	
" "	ORDERED: that Deft. Loewe's plea of guilty as to Count II be accepted by the Court. Pre sentence investigation to be made. Bail continued in sum of \$5,000.00	
" "	Filed Petition to Enter Plea of Guilty and Order Entering Plea.	7. ✓
* " 6	Filed Appearance Bond as to Deft. Johnson.	8. ✓
Jan. 10	Filed Magistrate's Warrant of Arrest as to Deft. Johnson.	9. ✓
Feb. 14	Filed Financial Affidavit of Deft. Johnson.	10. ✓
Feb. 15	Filed Appointment of David A. Gibson, Esq. as attorney for defendant Johnson.	11. ✓
Mar. 8	In Court before Judge Holden. David Reed, Esq. for Govt.; David A. Gibson, Esq. for Deft. Johnson. Deft. present in Court with his attorney for Arraignment.	
" "	Court makes inquiries of Deft. Johnson before plea.	
" "	Deft. Johnson waives reading of Indictment and enters a plea of not guilty as to all counts.	
" "	Mr. Gibson moves for 10 days to file motions.	
" "	ORDERED: That Deft. Johnson may have 10 days to file motions and hearing thereon will be held two weeks from today, and trial date will be fixed at that time.	
" "	Mr. Reed moves that bail be continued and that Deft. Johnson notify his attorney each week of his whereabouts.	
" "	ORDERED: Motion granted. Deft. Johnson's bail continued. Deft. to notify his attorney each week by phone or letter as to his whereabouts.	
" 18	Filed Motion of Deft. Raymond Johnson for Bill of Particulars.	12. ✓
" "	Filed Motion of Deft. Raymond Johnson for Discovery of Certain Evidence.	13. ✓
" "	Filed Motion of Deft., Raymond C. Johnson to Inspect and Analyze Substance Alleged to be illegal drug.	14. ✓
" 19	Filed Memorandum of Defendant Raymond Johnson in support of Motions for Discovery, For Bill of Particulars.	15. ✓
" 25	" Government's Bill of Particulars re deft. Loewe.	16. ✓
" "	" Government's Response to Motions of Deft. Johnson for Dis- covery, Bill of Particulars, Chemical Analysis and Memoran- dum of Points and Authorities.	17. ✓
Apr. 2	In Court before Judge Holden. Jerome F. O'Neill, Esq. for Govt; David Yarnell, Esq. for Deft. Loewe. Deft present in Court with his attorney for Sentence.	
" "	Court makes inquiries of Deft. and Counsel before sentence.	
" "	Statements made to Court by Mr. Yarnell re mitigation of sentence; and by Deft. Loewe.	
" "	Filed Judgment and Commitment--Deft. adjudged a Young Adult Offender under § 4208(b), T 18, USC. Deft. committed to custody of the Attorney General for five years, with special parole term of	

DATE 1974	PROCEEDINGS
Apr. 2	two years. Court deferes final sentence until study under T 18, § 4208(c) is completed. Results of study together with recommendations to be furnished within three months.
Apr. 30	Filed Certified Copy of Judgment and Probation/Commitment Order returned served--defendant Loewe committed on April 2, 1974 to State Correctional Facility, Windsor, VT, and committed on April 24, 1974 to FCI, Milan, Michigan.
July 16	In copen Court before Judge Holden, Defendant Loewe present with his Attorney, David Yarnell for final sentence; David Reed for Government.
" "	Court makes inquiries of Deft. Loewe and counsel before sentence.
" "	Statements made to Court by Mr. Yarnell re mitigation of sentence; followed by Mr. Loewe, father of Deft.
" "	Mathias Loewe, sworn by Clerk, made statements to Court for Deft.
" "	Court makes inquiries of Deft. Loewe, who makes statements.
" "	Sentence entered as to Count II, Deft. Loewe committed to custody of Attorney General for a period of three years with parole term of two years to follow. Court suggest that Bureau of Prisons place Deft. where parent may visit him.
" "	Mr. Reed moves to dismiss Counts I & III as to Deft. Loewe.
" "	Ordered: Motion granted. Counts I and III as to Deft. Loewe dismiss
" "	Filed Judgment and Probation/Commitment Order as to Deft. Loewe--
	Court finds the Deft. will not benefit from treatment under the Yough Corrections Act. Accordingly, disposition is made as indicated in T18, USC, §5010(d). Deft. sentenced on Count II. Deft. will be committed to the custody of the Attorney General for a period of 3 yrs. under T18, USC §4208(a)(2) with a special parole term of 2 yrs to follow. Deft. shall become eligible for parole at such time as the parole board may determine. Mailed copy to Attys.
Aug. 22	Filed Certified copy of Judgment returned served, Defendant delivered on 7-16-74 to State Correctional Facility, Windsor, Vermont, as to deft, Loewe.
Oct. 15	In open Court before Judge Holden. Jerome F. O'Neill, Ass't U. S. Attorney for Government. David A. Gibson, Esq., for Defendant Johnson.
" "	Hearing on dismissal of Indictment.
" "	Mr. O'Neill moves the Court to dismiss the Indictment.
" "	ORDERED: that the motion of the Government to dismiss the Indictment against Defendant Raymond Johnson in Cr. 74-7 is granted.
Nov. 14	Filed Memorandum and Order -- Defendant Loewe's motion for reduction of sentence denied. Mailed copy to attorneys and Charles J. Hughes, Warden, Federal Correctional Institution, Milan, Michigan 48160.

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